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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

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PIK-PIT

No. 285

S. ELBERT PIKE, ERNEST C. PIKE, CHARLES T. PIKE, CO-PARTNERS TRADING AS W. S. PIKE, SEEDSMAN, THE GLOBE SEED COMPANY, THE BEST GARDENS, AND MIDDLE WEST SUPPLY COMPANY,
Petitioners,

vs.

FRANK C. WALKER, (SUBSTITUTED FOR JAMES A. FARLEY) AS POSTMASTER GENERAL OF THE UNITED STATES; CALVIN W. HASSELL, ACTING SOLICITOR POST OFFICE DEPARTMENT; THOMAS J. MURRAY, ASSISTANT SOLICITOR, POST OFFICE DEPARTMENT; AND PETER J. CONNALLY, ATTORNEY, POST OFFICE DEPARTMENT,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

HORACE J. DONNELLY, JR.,
Counsel for Petitioners,
730—15th St., N. W.,
Washington, D. C.

THE GUNTHORP-WARREN PRINTING COMPANY, 838 WEST JACKSON, CHICAGO

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners, S. Elbert Pike, Ernest C. Pike and Charles T. Pike, co-partners, pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the District of Columbia affirming a final decree

of the District Court of the United States for the District of Columbia dismissing the complaint brought by the petitioners for declaratory judgment coupled with a prayer for injunctive relief, against the enforcement of a so-called fraud order issued by representatives of the Post Office Department against petitioners' trade names, on charges that under such names petitioners were engaged in conducting through the United States mails a scheme or device for obtaining money or property by means of false or fraudulent pretenses, representations or promises in violation of Sections 3929 and 4041 Revised Statutes of the United States as amended (Title 39 U. S. C. A. Sections 259 and 732). The opinion of the District Court appears in the printed record beginning at page 67. Findings of fact and conclusions of law of the District Court appear in the printed record beginning at page 68.

The United States Court of Appeals for the District of Columbia on March 17, 1941, in affirming the decision of the District Court, rendered an opinion which appears in the printed record beginning at page 77 and is reported in ..... F. (2d) .....

A petition for rehearing, which was denied by the United States Court of Appeals for the District of Columbia on April 22, 1941, appears in the printed record beginning at page 81.

It is sought to review the decision of the United States Court of Appeals for the District of Columbia.

Statement of the Case.

Petitioners, S. Elbert Pike, Ernest C. Pike, and Charles T. Pike, are brothers and co-partners trading as S. W. Pike, Seedsman; The Globe Seed Company; The Best Gardens, and Middle West Supply Company. Their principal address and place of business is at St. Charles in the

State of Illinois. The petitioners' business of growing seeds, bulbs and plants has been in continuous operation for fifty-two years, having originally been established in 1887 by S. W. Pike, the father of petitioners, who died in 1933. His sons (petitioners herein) who had previously been associated in the business of their father, succeeded to the ownership of the business upon their father's death (R. 47). The principal method in distributing petitioners' horticultural products is by mail (R. 47). It was conceded by the respondents and by the Trial Court (R. 48-49) that the fraud order complained of definitely puts petitioners out of the mail order business and that irreparable injury and damage resulted. The business conducted in the name of the Middle West Supply Company, a side-line venture selling face powder by mail, and designed to take up the seasonal slack in the horticultural business, was discontinued in 1938, months prior to the Post Office citation (R. 48).

The evidence adduced at the trial on the issues joined by petitioners' complaint and defendants' answer, definitely established that the facts and circumstances attendant upon the issuance of the fraud order complained of (and which are not disputed) are as follows:

Petitioners were ordered by an attorney in the Post Office Department to appear on March 13, 1939, before the Solicitor of the Post Office Department and show cause why a fraud order should not be issued against petitioners' concerns, The Best Gardens and Middle West Supply Company.

Petitioners appeared with their counsel at the time stated before Thomas J. Murray, another attorney of the Post Office Department, and a so-called hearing was convened. The Department's memorandum of charges was amended at that time to include the names Globe Seed Company and S. W. Pike, Seedsman. Testimony was taken

on behalf of both parties, comprising 677 typewritten pages, and hundreds of exhibits were introduced.

Some time after the close of the proceedings before Murray, Peter J. Connally, also an attorney in the office of the Solicitor, who presented and argued the case for the Department before Murray, read the transcript of record and made excerpts therefrom for the assistance of the Solicitor and the Postmaster General, and made some corrections of typographical errors (R. 35). Connally also prepared a proposed finding of fact (R. 36). Connally likewise discussed the case *ex parte* with Murray, the Hearing Officer (R. 37). The proposed finding of fact was then submitted, shortly before the issuance of the fraud order (R. 38), to defendant Calvin W. Hassell, Assistant Solicitor, who testified that he examined the record, read the briefs[1] for counsel on opposing sides, directed some changes to be made in the proposed finding of fact, and signed same (R. 41). No copy was furnished the respondents or their counsel (R. 41). Hassell testified that the exhibits in the case were so voluminous that they were not brought to his office (R. 41). The finding of fact and recommendation that a fraud order issue, as signed by Hassell on October 27, 1939, was then given to a messenger and by him taken to the Chief Clerk of the Post Office Department, who in turn transmitted the papers to the Postmaster General's office (R. 41). On the following day, Saturday, October 28, 1939, the Postmaster General satisfied himself that the finding of fact and recommendation for the issuance of the fraud order was properly signed by the Acting Solicitor for the Post Office Department, and he then glanced at several pages of the finding of fact and recommendation, and thereby acquainted himself with the nature of the scheme, and thereupon signed

1. While no brief was filed by Connally on behalf of the Government (R. 36), it is possible that his proposed finding of fact was considered a brief.

and issued the fraud order (R. 50-51). The fraud order had been previously prepared by Hassell (R. 41).

The fraud order recited that said order was issued "upon evidence satisfactory to him"—the Postmaster General (R. 7).

At no time did the Postmaster General hear any of the evidence, and by his admission, (R. 51), all he knew about the case was gleaned from a glance through several pages of the finding of fact and recommendation signed by Hassell, but prepared in substance by Connally. Having neither read nor heard the evidence, the Postmaster General did not consider and appraise same in issuing his so-called fraud order. Likewise, since he did not read or consider the answer of respondents, the evidence adduced in their behalf, or their argument and brief, he had no knowledge as to their contentions.

The above statement of facts is substantially in accord with the findings of fact made by the Trial Court below (R. 69-71), and the factual resume contained in the opinion of the appellate court (R. 78).

On March 21, 1940, a final decree was entered by the Trial Court dismissing plaintiffs' complaint.

The Court below, in its opinion (R. 79), discussed at length the limitations imposed by the First and Fifth Amendments to the Constitution of the United States on the power of the Postmaster General in such cases and declined to subscribe to, as being too farreaching, the proposition urged by the Postmaster General and accepted by the Trial Court, that the action of the Postmaster General in issuing a fraud order is ministerial and not judicial, and therefore not involved with the application of accepted standards of due process of law as established by this Court. The Appellate Court in declining to decide the constitutional question, relied upon the failure of peti-

tioners to include the testimony taken before the Post Office Department attorney, in the record on appeal, contending that there must be some showing that there is at least a reasonable doubt upon the merits, to warrant a Court in taking action against an invasion of petitioners' constitutional rights.

Questions Involved.

1. Did the procedure followed by the Post Office Department in the issuance of a fraud order against petitioners constitute a full and fair hearing satisfying due process of law?

2. Is such action by the Post Office Department purely ministerial or is it quasi-judicial in nature?

3. Does the absence of a specific provision for a hearing in the statute, exempt the Post Office Department from applying judicial standards of fair play in a fraud order proceeding?

4. As a condition precedent to raising a constitutional question as to an invasion of a citizen's rights to due process of law, is it necessary to establish that there is a reasonable doubt in the citizen's favor on the merits?

Reasons for Granting Writ.

This case involves several substantial and important Federal questions: (1) as to the application of the constitutional guarantee of the due process of law, to the procedure of the Post Office Department under Sections 3929 and 4041 Revised Statutes (Title 39 U. S. C. Sections 259 and 732); (2) as to the usurpation of limitless power by an administrative officer in a plenary action, in defiance of constitutional restrictions; and (3) as to the right of a citizen to relief in the Federal Courts from oppressive plenary

administrative orders issued without due process of law, in cases where the merits of the controversy are not presented.

The United States Court of Appeals for the District of Columbia in this case has decided an important question of Federal law in a decision which petitioners contend is untenable and contrary to the weight of authority and applicable decisions of this Court. The decision directly affects the large and important mail order industry, with an investment of many millions of dollars in property and equipment, employing hundreds of thousands of people.

It is the contention, therefore, of petitioners, that the questions here presented should be finally settled and determined on a review of the decision by this Honorable Court, as a matter of pubilc interest for the guidance of both the industry affected and the petitioners, as well as for the guidance of the Federal Government and the States.

For the reasons above outlined, your petitioners respectfully pray that a writ of certiorari issue to the United States Court of Appeals for the District of Columbia in this cause, commanding that Court to certify and send to this Court for its review and determination, a full and complete transcript of the record of the proceedings in the case numbered and titled on its docket No. 7697 S. Elbert Pike, *et al,* Appellants, v. Frank C. Walker as Postmaster General, *et al,* Appellees, and that the judgment of the Court below be reversed by this Court, and that your petitioners have such other and further relief in the premises as to this Court may seem just.

Respectfully submitted,

HORACE J. DONNELLY, JR.,
Counsel for Petitioners.